

Temporary Measures During the Health Emergency Period Relating to the Convening and Holding of Shareholders' Meetings, Boards' Meetings and Other Securities Holders' Meetings
(updated on 10 March 2021)

*Note: Décret n° 2020-255 of 9 March 2021 has extended until **31 July 2021** the period during which Ordonnance n° 2020-321 of 25 March 2020 relating to specific and temporary measures regarding the rules for convening and holding boards' and shareholders' meetings as a result of the Covid-19 could apply. Décret n° 2020-418 dated 10 April 2020 was also extended up to 31 July 2021. Specific temporary regime put in place during the first lockdown for the drawing up, auditing, review, approval and publication of the annual accounts pursuant to an Ordonnance n° 2020-318 dated 25 March 2020 was not renewed. Therefore, at this stage, any company with a fiscal year ending as from 11 August 2020 will have to draw up and approve its financial accounts according to the existing rules (i.e., the accounts have to be approved with a period of six months following the end of the relevant fiscal year).*

How shareholders' meetings and meetings of other securities' holders can be held until 31 July 2021?

Members of shareholders' meetings and meetings of other securities' holders can be convened by any means allowing them an efficient information on the date and time of the proposed meeting to be held, together with information relating to the conditions for exercising their respective rights.

Failure to send a convening notice in writing by mail for external reasons by a company which was due to do so will not trigger the nullity of the meeting.

The competent body to convene shareholders' meetings could also delegate such power to any person, provided that the power of attorney is granted in writing and set the duration of the power of attorney, the identity of the beneficiary and her/his/its capacity.

What is the situation if the convening to a shareholders' meeting has already been sent?

In this situation, it is possible to amend the convening in order to inform the shareholders by any means (including through e-mail) that the meeting will be held by audioconference or videoconference, provided that this information is sent no later than three business days prior to the date of the meeting.

For listed companies, the information will have to be released through a press release as soon as possible and by no later than three business days prior to the date of the meeting.

How shareholders' meetings and meetings of other securities' holders can be held until 31 July 2021?

Shareholders' meetings and meetings of other securities' holders may be held by audioconference or videoconference or without the shareholders being allowed to attend in person, provided that, at the convening or meeting of the shareholders, an administrative measure restricting or prohibiting travel or collective gatherings for health reasons hinders the physical presence at the meeting of its members.

This option is offered even if the bylaws or the issuance agreement do not provide so or expressly exclude it.

Unless expressly legally prohibited (such as for listed companies), all decisions which are to be approved by the shareholders, can also be taken in writing, notwithstanding any contrary provision set out in the bylaws or the issuance agreement.

Members attending such meetings by audioconference or videoconference or approving decisions in writing will be taken into account for the determination of the quorum and majorities.

If the shareholders' meeting of a listed company is held without the shareholders being allowed to attend the meeting in person and the shareholders cannot attend the meeting by videoconference or audioconference, the company must ensure the live video diffusion of the shareholders' meeting (save in case of technical issues) and a replay video diffusion (on its website as soon as possible and by no later than the end of the fifth business day following the meeting's date – the replay shall be also available during at least 2 years), or if not possible, a live and replay audio diffusion.

In such a case, the company shall inform the shareholders through the convening notice and a press release, and all written questions submitted by the shareholders, together with the answers, are to be published on the relevant section of the company's website.

In such cases (*i.e.* holding meetings by audioconference, videoconference or by written consultation), the minutes of the relevant meeting shall specify, among others, which option has been followed to hold the meeting and the administrative measure restricting or prohibiting travel or collective gatherings for health reasons hinders the physical presence at the meeting of its members. When it has been decided that the meeting of the shareholders in a listed company will be held without the shareholders being allowed to attend in person, the minutes of the meeting shall detail the legal and factual reasons supporting such decision, in particular the relevant administrative measure. If the shareholders of a listed company cannot attend a meeting by audioconference or videoconference, the minutes of the shareholders' meeting shall also explain the reasons of such decision.

What is the situation if the chairman of the board of directors (or of the supervisory board) is unable to chair a shareholders' meeting held in closed session or by audioconference or videoconference?

If the chairman of the board of directors or the chairman of the supervisory board (or, in their absence, the person duly authorized to replace them under the bylaws) cannot chair the shareholders' meeting held in closed session or by audioconference or videoconference, the meeting may be chaired by any person appointed for this purpose by the board of directors or the supervisory board among its members or, if they are not available, among the company's directors (*mandataires sociaux*).

What is the situation if two scrutineers (scrutateurs) cannot be appointed among the shareholders?

The competent body to convene the shareholders' meeting (or its attorney) shall appoint two scrutineers chosen among the ten most important shareholders in terms of voting rights as far as the company is aware of at the date of the convening of the shareholders' meeting. In case of refusal or lack of answer for these shareholders, scrutineers may not be chosen among shareholders.

Can extraordinary shareholders' meetings be held by audioconference or videoconference?

The flexibility offered by the Ordonnance n° 2020-321 dated 25 March 2020, as amended, concerns any type of meeting. Therefore, both ordinary and extraordinary meetings can be held by audioconference or videoconference, provided that, if held in person, they would be located in an area where meetings of people are legally limited or forbidden on the date of their convening.

To which companies those provisions apply?

The provisions apply, among others, to all limited liability companies (*société anonymes, sociétés par actions simplifiées, société en commandite par actions*, etc), unlimited liability companies (*société civiles, GIE or GEIE*), any meeting of securities' holders or financial securities' holders, trusts and NGOs.

Can shareholders send questions or request information ahead of a shareholders' meeting and how the company answers?

The shareholders can submit question and request for further information in advance of the shareholders' meetings.

The company must comply with the current statutory provisions and provide the shareholders with the requested information.

However, the delivery of answers and information is facilitated and may be e-mailed by the company, if and only if the concerned shareholder has provided the company with its e-mail address in its initial request.

When the shareholders' meeting of a listed company is held without the shareholders being allowed to attend in person, the questions submitted in writing are taken into account if received by no later than the end of the second business day prior to the date of the shareholders' meeting and are published,

together with their answers, by no later than the expiry of the fifth business day following the date of the shareholders' meeting.

Can shareholders vote remotely by post mail and send their voting instructions by electronic mail?

Yes. In companies where it is authorized to vote remotely by postal voting form, it will be possible to decide in the convening notice to shareholders' meeting that voting instructions be sent by e-mail to the company at the e-mail address so specified in the convening notice (as the case maybe, under the form required under current applicable law, the company's bylaws or the securities subscription agreement), even if the bylaws or the issuance agreement do not provide so or expressly prohibit it.

Can shareholders vote in shareholders' meetings by electronic means?

Yes. Shareholders of *sociétés par actions* or *sociétés à responsabilité limitée*, as well as bondholders, securities' holders or financial securities' holders giving access to share capital, will be allowed to vote by electronic means, provided that such option is provided for in the convening notice, even if the bylaws or the issuance agreement do not authorize it or prohibit it.

As set forth under the regulations in force prior to the law relating to the emergency period, *sociétés anonymes* and *sociétés à responsabilité limitée* shall set up a dedicated website.

Shareholders will be authorized to access to the website subject to authentication through a password provided by the company in advance of the meeting.

In the event of a written consultation, it could be decided that the shareholders may sent their answer by electronic means.

Could shareholders submit questions or request the addition of new resolutions during the shareholders' meetings?

The exercise of rights that currently require the effective presence of shareholders will not be applicable if the relevant meetings are not physically held.

Therefore, shareholders will not be allowed to ask oral questions during the shareholders meetings, nor will they be allowed to request changes to the resolutions proposed by the company during the meetings if not held physically. As a consequence, all those rights will have to be exercised by the shareholders prior to the shareholders' meetings.

Where shareholders and other securities holders are represented during the relevant meetings, can their proxy forms be sent by e-mail to the company?

Yes. With respect to shareholders' meetings and other securities holders' meetings held physically and allowing their members to be represented, their members can send their proxy forms by e-mail to the company using the e-mail address provided for in the convening notice.

With respect to shareholders' meetings held by audioconference or videoconference, the proxy forms can be validly received by the company by no later than four days prior to the date of the meeting.

Proxy holders can also send their voting instructions to the company by e-mail using the e-mail address provided for in the convening notice but by no later than 4 days prior to the date of the meeting and in the postal voting form set out under Article R. 225-76 of the French commercial Code.

Could a shareholder which sent its proxy form or voting instructions to the company eventually decide to attend the meeting held by audioconference or videoconference?

Yes. Shareholders which sent their proxies or voting instructions to the company can eventually decide to attend the meeting to be held by audioconference or videoconference, provided that their instructions are received by the company no later than four days prior to the meeting. In such case, their former instructions will be deemed revoked.

This option will be possible even if the bylaws do not expressly provide it.

How boards' meetings can be held until 31 July 2021?

All boards' meetings (board of directors (*conseil d'administration*), executive board (*directoire*) or supervisory boards (*conseils de surveillance*) can be held on any agenda by audioconference, videoconference or by written consultation, even if the bylaws do not provide so or expressly prohibit it.

Audioconference and videoconference are only allowed to the extent they enable an identification of the attendee and his/her effective presence during the board meeting.

All existing rules preventing boards to be held remotely are consequently suspended.

For additional information, please refer to the FAQ of the Ministry of Economy:

<https://www.tresor.economie.gouv.fr/Articles/1c3d1af2-dfea-4f9c-a998-efbce8f918d0/files/ab924fa1-727a-480b-b5b1-d5becda2d6b4>